

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket 96-45
Universal Service)	
)	DA 03-1929
NPCR, INC. d/b/a NEXTEL PARTNERS)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the Commonwealth of Pennsylvania)	
_____)	

**EX PARTE COMMENTS OF NPCR, INC. d/b/a NEXTEL PARTNERS
IN REPLY TO LATE-FILED COMMENTS OF OPASTCO AND PENNSYLVANIA PUC**

NPCR, INC. d/b/a NEXTEL PARTNERS

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Date: July 22, 2003

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SUMMARY

Nextel Partners submits these *ex parte* comments in response to the comments filed by OPASTCO and PaPUC in this proceeding.

The Commission should reject OPASTCO's request for a stay of the Commission's consideration of Nextel Partners' petition for ETC designation based on the possibility of future changes in the Commission's rules regarding the distribution of Universal Service Funds. The Commission is bound by existing rules and established policies that call for prompt consideration of ETC designation petitions. Moreover, Nextel Partners and any other petitioning or designated carrier will be subject to all relevant future rule changes. OPASTCO is improperly attempting to use the possibility of future growth in the Universal Service Fund as a springboard for limiting competition. Future growth in the USF has already been anticipated by the Commission's rules and proceedings and will be timely addressed by the Commission in due course. In the meantime, the public interest requires that residents of rural Pennsylvania should be afforded similar access to competitive ETCs as that already being enjoyed by residents of other states.

The PaPUC confirms that it does not take jurisdiction over designation of wireless ETCs. The PaPUC's apparent belief that some residents of rural Pennsylvania may prefer to replace their wireline service with wireless service demonstrates the importance of facilitating *all* citizens' access to advanced competitive mobile communications services. These rural citizens want and need the advanced services that Nextel Partners offers, and the Universal Service Fund exists for the very purpose of helping to facilitate reasonable deployment of those services in the respective high cost areas. The Commission should grant Nextel Partners' petition immediately.

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NPCR, Inc. d/b/a Nextel Partners (“Nextel Partners”), by its undersigned counsel, hereby submits these “Ex Parte Comments” in the above-captioned proceeding in response to late filed comments filed on July 14, 2003 by the Pennsylvania Public Utility Commission (“PaPUC”) and by the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”). Although PaPUC and OPASTCO each styled its respective submission as “Reply Comments,” both submissions are actually initial comments within the scope of 47 C.F.R. § 1.415(b) rather than “reply comments” under 47 C.F.R. § 1.415(c), as they raise *direct* comments on Nextel Partners’ petition, and do not respond to any of the earlier comments filed in this proceeding. Thus, both sets of comments must be treated as late-filed comments and either rejected by the Commission as late or considered on an *ex parte* basis only.

As discussed below, neither OPASTCO nor PaPUC presents any reasonable basis for denying Nextel Partners’ petition. Nextel Partners respectfully requests that the Commission grant Nextel Partners’ petition for ETC designation within Pennsylvania immediately.

I. REPLY TO OPASTCO'S COMMENTS

OPASTCO comments generally that Nextel Partners should be required to make a larger public interest showing, “taking into account both the public benefits and the public costs of granting ETC status to [Nextel Partners].”¹ OPASTCO also suggests that the Commission should consider staying the instant proceeding “pending the resolution of the current proceeding that is considering changes to the Commission’s rules relating to high-cost support in competitive study areas.”² OPASTCO’s comments have no merit.

A. OPASTCO Has Not Shown a Sufficient Basis for a Stay

The possibility of a future change in rules generally affecting the designation of ETCs and/or the distribution of Universal Service Funds cannot justify staying Nextel Partners’ request for designation as an ETC in Pennsylvania. The Commission is bound to abide by *existing* rules and policies in all proceedings.³ This includes ETC designation proceedings, in which the Commission has rejected the very type of argument raised by OPASTCO on the basis that, “these concerns are beyond the scope of this Order, which designates a particular carrier as an ETC” under existing rules.⁴ The Commission is committed to resolving ETC designation petitions in a six-month time frame, recognizing that “excessive delay in the designation of competing providers may hinder the development of competition and the availability of service

¹ OPASTCO Comments at 2.

² *Id.*

³ *CSRA Cablevision, Inc.*, Memorandum Opinion and Order, 47 FCC 2d 572 at ¶ 6 (1974) (“Under the Administrative Procedure Act and the relevant judicial decision, the Commission is bound to follow its existing rules until they have been amended pursuant to the procedures specified by that act.”)

⁴ *Federal-State Joint Board on Universal Service; Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24393, 24405-06 (2002).

in many high-cost areas.”⁵ Staying the instant proceeding would “unnecessarily delay resolution of this matter well beyond the Commission’s informal [six month] commitment.”⁶

OPASTCO raises the specter of imminent ballooning of the Universal Service Fund as grounds for a stay, asserting that if Nextel Partners is granted ETC designation in Pennsylvania, then all CMRS providers everywhere will seek and obtain ETC designation,⁷ and “OPASTCO estimated that if all CMRS providers nationwide were to apply for and receive ETC status, the annual funding level of the High-Cost program would increase by approximately \$2 billion.”⁸ But OPASTCO offers *no* evidence demonstrating that all CMRS providers wish to be designated as ETC’s. There has been no flood of wireline ETC petitioners and there is no reason to assume that wireless carriers will act differently by seeking to obtain ETC designation *en masse*.

In developing support mechanisms, the Commission was aware that the Universal Service Fund would grow over time as competitive ETCs entered the market, and the Commission adopted mechanisms that would allow for adjustment over time.⁹ The funding¹⁰

⁵ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000) (“Twelfth Report and Order”).

⁶ *See Federal-State Joint Board on Universal Service; RCC Holdings, Inc., Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532, 23535, n.27 (2000).

⁷ *See* OPASTCO Comments at 3.

⁸ OPASTCO Comments at 3.

⁹ *See In the Matter of Federal-State Joint Board on Universal Service: Multi-Association Group (MAG) plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, ¶ 11 (2001) (“The plan adopted today will provide certainty and stability for rural carriers for the next five years, enabling them to continue to provide supported services at affordable rates to American consumers. While we take an important step today on rural universal service reform, our task is not done. Our universal service rules cannot remain static in a dynamic marketplace. As we move forward, we will continue to refine our policies to preserve and advance universal service,

and all of the core services¹¹ were discussed in length, reviewed by the Joint Board, reconsidered in the recent Order and Order on Reconsideration¹² and, in some cases, litigated.¹³ In establishing the funding mechanisms, the Commission struck a balance between the concerns of all types of parties and carriers, including consideration of issues involving wireless ETC designation.¹⁴ To prevent designation of competitive ETCs as we move the implementation phase is troubling at best, and antithetical to the underlying purposes of the Act.¹⁵ After the ILECs fought to increase the amount of funding to support embedded costs,¹⁶ they are now using the size of the fund as an argument to prevent the entry of competitors.¹⁷

consistent with the mandates in section 254.”) (“MAG Order”); *See also In the Matter of Federal-State Joint Board on Universal Service*, Notice of Proposed Rulemaking, 18 FCC Rcd 2932, ¶ 84 (2003) (wherein the Commission is already working to address anticipated future growth in the USF resulting from the entry of additional wireless ETCs during the next several years.)

¹⁰ *See, e.g., In the Matter of Federal-State Joint Board on Universal Service*, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20452, ¶ 90 (1999) (discussing support of second lines and the lines of non-ILEC ETCs).

¹¹ *See In the Matter of the Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 2003 FCC Lexis 3915, DA 03-170 (rel. July 14, 2003) ¶ 7.

¹² *Id.*

¹³ *See, e.g., Alenco Communications, Inc. et al v.FCC*, 201 F.3d 608 (5th Cir 2000).

¹⁴ *See* MAG Order at ¶ 17 (“The Recommendation represents the consensus of individual Rural Task Force members, who work for a broad range of interested parties, often with competing interests, including rural telephone companies, competitive local exchange carriers, interexchange carriers, wireless providers, consumer advocates, and state and federal government agencies”), ¶ 178 (“All telecommunications carriers, including commercial mobile radio service (CMRS) carriers that provide supported services, regardless of the technology used, may be eligible to receive federal universal service support”), and ¶ 180 (“we adopt the Rural Task Force’s recommendation that a wireless mobile carrier use a customer’s location ... for purposes of receiving high-cost universal service support”).

¹⁵ *See Alenco Communications* at 619.

¹⁶ *See* MAG Order at ¶¶ 6-8.

¹⁷ In non-rural study areas, the OPASTCO’s anticompetitive “ballooning” argument, which OPASTCO has attempted to cloak in the guise of a “public interest” concern over the size of the

Nextel Partners' primary business focus is the provision of services in mid-sized and tertiary markets.¹⁸ This business focus makes Nextel Partners a natural and high-priority candidate for ETC designation. But not every CMRS carrier is interested in pursuing an active course of providing the required services for ETC designation and building out a network in high-cost areas. There is no reason to believe that wireless ETCs pose any greater risk than wireline ETCs to the survival of the Universal Service Fund.

In any case, OPASTCO's speculation as to what other wireless providers may or may not choose to do is not relevant to this proceeding, which involves the consideration of whether a particular CMRS provider—Nextel Partners—should be designated as an ETC in various study areas in Pennsylvania. That issue turns on whether Nextel Partners has made the requisite showings in its petition, and whether, with regard to study areas of rural telephone companies, the public interest would be served by the grant of ETC status. OPASTCO has not demonstrated that Nextel Partners failed to meet its burden on these issues, and OPASTCO has submitted nothing that would warrant denying or staying Nextel Partners' petition.

Rather than addressing these relevant issues, OPASTCO's sole basis for asserting that Nextel Partners should not be designated an ETC is that Nextel Partners is a wireless provider and designation of wireless providers is something with which OPASTCO disagrees. The Commission's universal service rules do not favor one type of technology over another.¹⁹ The

fund, is irrelevant since no public interest determination is warranted under the Act for non-rural study areas.

¹⁸ See **Exhibit 1** hereto, Excerpts from Nextel Partners, Inc.'s publicly filed Form 10-K Annual Report at 4. While Nextel Partners, Inc. serves the secondary and tertiary markets, Nextel Communications, Inc., a separate publicly traded company, serves the primary markets.

¹⁹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776, 8801 (May 8, 1997) ¶¶ 46-47 ("Universal Service Order").

Commission has already determined that wireless providers should be designated as ETCs, stating, “We agree with the Joint Board's analysis and recommendation that any telecommunications carrier using any technology, including wireless technology, is eligible to receive universal service support if it meets the criteria under Section 214(e)(1).”²⁰ Moreover, contrary to OPASTCO’s claims,²¹ the Commission has previously designated large wireless carriers as ETCs.²² The Commission cannot stay or deny Nextel Partners’ petition for ETC designation merely because Nextel Partners is a wireless carrier.

B. Nextel Partners Met its Burden of Demonstrating that Designation of Nextel Partners as an ETC in Pennsylvania would Serve the Public Interest

OPASTCO asserts that Nextel Partners’ petition “is based entirely on vague generalities regarding the generic benefits of competition.”²³ OPASTCO is mistaken. Nextel Partners’ petition in fact explains that Nextel Partners will offer the supported services throughout its service area for which it seeks designation and demonstrates further that the public interest will be served through granting of Nextel Partners’ petition. OPASTCO fails to demonstrate

²⁰ Universal Service Order at 8858, ¶ 145.

²¹ OPASTCO’s Comments at 2.

²² Western Wireless, via its subsidiaries, Cellco d/b/a Bell Atlantic Mobile and Cellular South, have been designated ETCs in several states. See, e.g., Memorandum Opinion and Order, *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48 (2000) (“*Western Wireless Wyoming Order*”; Memorandum Opinion and Order, *In the Matter of Federal-State Board on Universal Service; Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, 16 FCC Rcd 18133 (2001) (“*Western Wireless Pine Ridge Order*”); Memorandum Opinion and Order, *In the Matter of Federal State Joint Board on Universal Service; Cellular South License, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 24493 (2002) (“*Cellular South Order*”); and Memorandum Opinion and Order, *In the Matter of Federal State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile. Petition for Designation as an Eligible Telecommunications Carrier*, 16 FCC Rcd 39 (2000) (“*Cellco Order*”).

²³ OPASTCO Comments at 5.

otherwise, and in fact does not even attempt to do so, demurring instead that OPASTCO's comments "are not intended to debate the many nuances of considering the public interest when evaluating an ETC application."²⁴

In fact, OPASTCO does not appear to have any concern at all for the benefits that will accrue to the citizens of Pennsylvania as a direct result of the designation of Nextel Partners as an ETC. In this regard, it is remarkable that, while OPASTCO recognizes that the citizens of Iowa are able to choose among several competitive ETC's,²⁵ OPASTCO nevertheless seeks to deny these benefits to the citizens of Pennsylvania. OPASTCO does not explain how or why the public interest of rural citizens in Pennsylvania differs so drastically from that of citizens in Iowa and other states where wireless ETCs have been designated. Residents of Pennsylvania are not "second-class citizens" and do not deserve to be treated as such.²⁶

OPASTCO does not properly focus on the interests of the citizens of Pennsylvania, and in particular whether rural consumers in Pennsylvania might benefit from competitive alternatives and a more comprehensive menu of choices. Instead, to support its contention that the "public interest" does not favor designation of Nextel Partners as an ETC, OPASTCO focuses on the same theoretical structural effects on the Universal Service Fund that OPASTCO predicts may result from the designation of wireless ETCs in general as already discussed above.

²⁴ OPASTCO Comments at 5.

²⁵ OPASTCO Comments at 3, n.5.

²⁶ See *Application of WWC Texas RSA Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. § 214 (e) and PUC SUBST. R. 26.418*, PUC Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167 and 473-00-1168, Order at 2 (Texas Public Utility Commission, October 30, 2000) ("Rural Texans are not second class citizens and should not be deprived of competitive alternatives or access to new technologies.")

OPASTCO claims, “there is no discussion in Nextel’s application of the public costs that would be incurred by providing high-cost support to Nextel for its existing customer base.”²⁷ OPASTCO does not cite to any applicable legal authority that would require Nextel Partners to include such an amorphous discussion in its petition. At any rate, Nextel Partners does not believe there is any adverse public cost that might realistically result from designation of Nextel Partners as an ETC, and thus Nextel Partners did not discuss such “costs” in its petition. Nor has OPASTCO independently demonstrated any adverse public costs that would result from granting the petition. Indeed, OPASTCO has not even attempted to do so, but has merely propounded theoretical platitudes that it would like some other party—perhaps Nextel Partners or the Commission—to investigate and address. If OPASTCO is concerned that the public would be harmed as a result of increased competition to an incumbent ETC, then OPASTCO should come forward with some reasonable empirical evidence to make such a demonstration.²⁸ As for the *possibility* that a rural area might “*in fact* be incapable of sustaining more than one ETC ... evidence would need to be before us before we could conclude that it is not in the public interest to designate an [ETC].”²⁹ Neither OPASTCO, nor any potentially affected incumbent ETC, has provided such evidence. Accordingly, OPASTCO’s speculations are entirely unfounded and are not entitled to any more credence than any other unsupported proposition.

The Commission’s Universal Service Rules are based on the fundamental assumptions that *all* residents of rural communities will benefit from competition in telecommunications

²⁷ OPASTCO Comments at 6.

²⁸ See *Western Wireless Wyoming Order* at ¶ 25 (the issue to be addressed in making the public interest determination is “whether consumers will be harmed.”)

²⁹ *Western Wireless Wyoming Order* at ¶ 22.

services and access to the same technologies and services that are available to residents of urban areas. In fact this central goal is stated outright in the Act itself:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

47 U.S.C. § 254(b)(3). The burden is on parties opposing designation to demonstrate why these assumptions – and clearly-stated statutory imperatives -- do not apply to Nextel Partners' ETC petition in Pennsylvania. OPASTCO and the other commenters have not met that burden.

II. REPLY TO PaPUC'S COMMENTS.

The comments submitted by PaPUC confirm the representation contained in Nextel Partners' petition that PaPUC does not take "jurisdiction over CMRS for purposes of making determinations concerning eligibility for ETC designations."³⁰ PaPUC observes further that it retains "an interest in fair competition in the telecommunications market in the Commonwealth of Pennsylvania."³¹ Nextel Partners also is interested in fair competition. The Commission's Universal Service rules are in fact specifically intended to foster fair competition in high cost areas.³² As the Commission has observed, "a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service

³⁰ PAPUC Comments at 1.

³¹ *Id.* at 1-2.

³² The implementation of universal service support mechanisms is part of a "trilogy of actions that are focused on achieving Congress's goal of establishing a 'pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition.'" Universal Service Order at 8781, ¶ 4.

support.”³³ Fair competition in Pennsylvania requires that Nextel Partners should have access to the same types of federal support that other providers of similar services receive.

PaPUC also requests that the Commission require Nextel Partners “to offer a showing that the company intends and is able to provide telephone service to everyone throughout the proposed service territory.”³⁴ Under the Commission’s rules, Nextel Partners is not required to provide ubiquitous service as a precondition for ETC designation, nor is Nextel Partners required to have in place in advance of designation the necessary infrastructure to provide service to all potential rural customers in its designated service area.³⁵ The purpose of the fund is not merely to replace historical investment costs, but rather to promote the growth of telecommunications services in high cost areas.³⁶ To require ubiquitous service capacity of a telecommunications carrier prior to ETC designation is to misconstrue the purpose of the fund and would prevent the designation of any additional ETCs.³⁷ Nextel Partners agrees that it will comply with applicable law by providing service upon reasonable request in the service areas for which it seeks designation. Contrary to PaPUC’s concerns, Nextel Partners will not “selectively market to the most lucrative customers” in “the higher densities that pay higher rates.”³⁸ As noted above, the

³³ See *In the Matter of Federal State Joint Board on Universal Service: Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket. No. 96-45 (rel. July 11, 2002) at ¶¶ 12, 14 (“South Dakota Order”)

³⁴ PAPUC Comments at 3.

³⁵ See Memorandum Opinion and Order, *In the Matter of the Federal State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area in the State of Alabama*, 17 FCC Rcd 23532 at ¶ 16.

³⁶ See South Dakota Order at ¶¶ 12, 14.

³⁷ *Id.* at ¶¶ 10, 12-13.

³⁸ PAPUC Comments at 3.

sole focus of Nextel Partners' business is on customers in the smaller markets,³⁹ and thus Nextel Partners already has made a business commitment to serving the lower density and higher cost areas, which makes Nextel Partners a natural and high-priority candidate for ETC designation.

PaPUC suggests that increasing numbers of customers are relying more heavily on mobile communications technology, and suggests further that some customers are using wireless service as a replacement for wireline service.⁴⁰ PaPUC apparently sees this asserted trend as a threat to Pennsylvania "business"—presumably, some ILECs—although PaPUC presents no evidence that any business in Pennsylvania is threatened. In any case, PaPUC's assertion only serves to demonstrate that *all* citizens want and need access to competitive mobile communications services—rural citizens of Pennsylvania should not be singled out for exclusion from access to wireless services that other United States citizens can receive and benefit from.⁴¹

PaPUC also suggests that designation of a wireless ETC will somehow result in unfair competition in Pennsylvania, asserting,

There should not be an unfair competitive advantage to the wireless carrier, which does not have to contribute to the Pennsylvania Universal Service Fund, which does not pay access charges, which is not taxed by the State government within which it offers phone service, and which does not pay assessments to help fund the PaPUC, and which might not be required to be a universal provider in order to receive universal service support.⁴²

PaPUC's concerns are misplaced. Nextel Partners is subject to Federal regulation and makes contributions to the Federal Universal Service Fund from which it will be drawing its support. PaPUC's other concerns are matters of State law that would be more appropriately addressed to

³⁹ See **Exhibit 1** hereto at 4, indicating that Nextel Partners' business is to provide services in the "mid-sized and tertiary markets."

⁴⁰ PAPUC Comments at 4.

⁴¹ See Universal Service Order at ¶ 4.

⁴² PaPUC Comments at 4.

the State legislature than to this Commission. With regard to PaPUC's "universal provider" concern, Nextel Partners' petition demonstrates both the commitment and ability to meet reasonable requests for service from any customer within the designated service area.⁴³

PaPUC also appears concerned that restrictions it places on wireline carriers within its jurisdiction may not apply to wireless carriers under Federal jurisdiction—e.g., limitations on "vertical services" or "bundled packages" offerings.⁴⁴ These concerns are not relevant to this proceeding. ETC designation must be technology neutral, regardless of whether the FCC and Congress have determined that there should not be across-the-board regulatory parity between wireline and wireless carriers. Similarly irrelevant to this proceeding are PaPUC's concerns regarding Nextel Partners' costs of providing service, and the method for calculating support to wireless ETC's. Although PaPUC suggests that wireless providers have "arguably" lower costs of operation than wireline providers,⁴⁵ PaPUC offers no evidence to support this assertion and no explanation of how it might relate to the public interest determination. In any case, the citizens of Pennsylvania will receive direct benefit from any cost of service efficiencies that might result from granting ETC designation to Nextel Partners, through expanded access to innovative services and increased consumer choice

III. CONCLUSION

Because all applicable legal and public interest requirements for designation as an eligible telecommunications carrier have been met, Nextel Partners requests that the Commission promptly grant Nextel Partners' Petition.

⁴³ See *Cellular South Order* at ¶ 27.

⁴⁴ PaPUC Comments at 5.

⁴⁵ PaPUC Comments at 5.

NPCR, INC. d/b/a NEXTEL PARTNERS

Date: July 22, 2003

SERVICE LIST

The following persons are served with a true and complete photocopy of Nextel Partners'

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EXHIBIT 1

**Excerpts from Nextel Partners, Inc.'s
Publicly filed Form 10-K Annual Report**

10-K 1 a2106128z10-k.htm 10-K

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K

(Mark One)

- ☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2002

OR

- ☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number: 000-29633

NEXTEL PARTNERS, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

91-1930918
(I.R.S. Employer Identification No.)

**4500 Carillon Point,
Kirkland, Washington 98033,
(425) 576-3600**
(Address of principal executive offices, zip code
and telephone number, including area code)

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:
None

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:
Class A Common Stock, \$0.001 par value

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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PART IV

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PART I

Item 1. Business

Overview

We provide digital mobile communications services using the Nextel brand name in mid-sized and tertiary markets throughout the United States. We offer digital cellular services; Direct Connect® (the long-range digital walkie-talkie service); wireless data services, including email; text messaging; and Nextel Online®, which provides wireless access to the Internet and an organization's internal databases and other applications. We hold licenses for wireless frequencies in markets where over 53 million people, or Pops, live and work. We have constructed and operate a digital mobile network compatible with the digital mobile network constructed and operated by Nextel Communications, Inc. ("Nextel") in targeted portions of these markets, including 13 of the top 100 metropolitan statistical areas and 57 of the top 200 metropolitan statistical areas in the United States ranked by population. Our combined "Nextel Digital Mobile Network" constitutes one of the largest fully integrated digital wireless communications systems in the United States, covering 197 of the top 200 metropolitan statistical areas in the United States at the end of 2002. As of December 31, 2002 we had approximately 877,800 digital handsets in service in our markets.

Our relationship with Nextel was created to accelerate the build-out and expand the reach of the Nextel Digital Mobile Network. In January 1999, we entered into a joint venture agreement with Nextel WIP Corp. ("Nextel WIP"), an indirect wholly owned subsidiary of Nextel. Nextel, through Nextel WIP, contributed to us cash, licenses for wireless frequencies and granted us the exclusive right to use the Nextel brand name in exchange for ownership in us and our commitment to build out our compatible digital mobile network in selected markets and corridors, in most cases adjacent to operating Nextel markets. As of December 31, 2002, Nextel WIP owned 31.6% of our common stock and is our largest stockholder. By the end of 2002, we had successfully built all of the markets we were initially required to build under our 1999 agreement with Nextel. Since 1999 we have exercised options to expand our network into additional markets. By December 31, 2002, we had completed the construction of all but two of these additional markets, both of which we expect to complete and launch in the first half of 2003. Through our affiliation with Nextel our customers have seamless nationwide coverage on the entire Nextel Digital Mobile Network.

We offer a package of wireless voice and data services under the Nextel brand name targeted primarily to business users. We currently offer the following four services, fully integrated and accessible through a single wireless handset:

- digital mobile telephone service, including advanced calling features such as speakerphone, conference calling, voice-mail, call forwarding and additional line service;
- Direct Connect, sometimes referred to as the long-range walkie-talkie feature, which allows customers in the same geographic region to contact each other instantly, on private one-to-one calls or on group calls involving up to 100 customers simultaneously;
- two-way messaging, which allows customers to receive and send short numeric and text messages from their handset; and
- Internet services, marketed as Nextel Online, which provide customers with Internet-ready handsets access to the World Wide Web and web-based applications such as email, address books, calendars and advanced